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General series. Memorandum*

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CHANGES IN CHILD WELFARE LEGISLATION IN CANADA

1958, 1959, 1960, AND 1961

MEMORANDUM NO.17

GENERAL SERIES



RESEARCH AND STATISTICS DIVISION  
DEPARTMENT OF NATIONAL HEALTH AND WELFARE

OTTAWA

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1958, 1959, 1960, AND 1961

Published by the Authority of  
The Honourable J. Waldo Monteith  
Minister of National Health and Welfare

Memorandum No. 17, General Series

Research and Statistics Division  
Department of National Health and Welfare

Ottawa

January, 1962



## FOREWORD

This bulletin covers major changes in child welfare legislation during the years 1958, 1959, 1960, and 1961. It comprises annual statements prepared as a counterpart of our articles on assistance (mothers' allowances, general assistance and living accommodation for the aged), which appear periodically in the Labour Gazette.

It may be noted that the format for the 1961 statement has been altered, in that changes are noted by province instead of by subject as in the statements on previous years.

The material was prepared in the Research and Statistics Division by Miss Ruth Brown under the general direction of Mrs. Flora Hurst, Supervisor of the Welfare Section.

A handwritten signature in dark ink, appearing to read "John E. Osborne". The signature is fluid and cursive, with a large, ornate initial "J" and "O".

John E. Osborne, Director,  
Research and Statistics Division.







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## CHANGES IN CHILD WELFARE LEGISLATION IN CANADA, 1961

Extensive changes were made in child welfare legislation across the country during the period October, 1960 to December 1961, as follows: a new Children's Protection Act in Prince Edward Island; Part VIII on Adoption in Manitoba's Child Welfare Act revised and re-enacted; a new Legitimacy Act to replace The Legitimation Act in Saskatchewan; a revised Part VII on Retarded Children in Nova Scotia's Child Welfare Act, and a number of other significant changes.

In Quebec, no changes were made in child welfare legislation, as such, during the year under review, but mention might be made here of a recent assistance statute, the Schooling Allowances Act, effective September 1, 1961, administered by the Minister of Family and Social Welfare. This provides for an allowance of \$10 a month, except in July and August, payable to the mother, irrespective of need, on behalf of every child 16 to 18 years of age who is attending school.

### NEWFOUNDLAND

#### Protection

Newfoundland added several sections on the protection of children to the Welfare of Children Act under the Welfare of Children (Amendment) Act, 1961, which was assented to March 13, 1961.

The added sections provide that if the Director of Child Welfare believes on reasonable and probable grounds that a child is a neglected child, he or any person authorized by him in writing may apply to a judge for a declaration that a child is a neglected child. The Director must give the parents or guardian of the child at least ten days' notice of the hearing. The judge of a juvenile court may compel the attendance of witnesses and for that purpose is given all the powers of a stipendiary magistrate.

When a child has been committed temporarily to his care, the Director is required to bring the matter again before the judge either during the period of commitment or at its expiration. The judge will then consider all the circumstances and determine whether the child should be returned to its parent or guardian or remain in the care of the Director. Pending the final determination of an inquiry, the judge may make whatever order for temporary detention and care of the child as he deems proper.



## PRINCE EDWARD ISLAND

### Protection

The Children's Protection Act, 1961, assented to March 16, 1961, repealed and replaced The Children's Protection Act, R.S.P.E.I. 1951 and amendments.

The new Act makes a number of changes in definitions. The term 'apprehension' now includes the act of notifying the parent or person having custody of a child of the date and place of the hearing before a judge, as well as meaning the act of taking a child into custody with or without the consent of the parent or person having custody of the child. The definition of 'child welfare agency' recognizes the importance of prevention by adding to the two functions formerly stated, "the amelioration of family conditions that lead to neglect of children." The definition of 'neglected child' has been revised and set out in fourteen subsections, similar to those of most other provinces.

Other changes affect time limitations on commitments, private hearings, penalties, and the responsibilities of the Director of Child Welfare, of child welfare agencies, and of the provincial government.

The period of time between apprehension and the time a child appears before a judge or is returned to his parent or guardian has been lengthened from one week to ten days.

There is provision for a limitation on the period of temporary commitment of a child to a total period of not more than twenty-four months from the date of the first order for temporary commitment.

The revised Act provides that the Director of Child Welfare or a child welfare agency remains the legal guardian of a permanent ward until the child is eighteen years of age, until he is adopted, or until another guardian is appointed or guardianship is terminated. To this is added the further provision that, when it is in the interests of the child, the judge may extend wardship beyond the eighteenth birthday, but not beyond the twenty-first birthday. Provision is also made for re-opening the question of permanent commitment. The Director of Child Welfare or of a child welfare agency may bring the case before a judge to determine if the welfare of the child might best be served by the termination of permanent commitment.

Hearings are private and all persons except those directly concerned are excluded. The child is also excluded except for periods in which he is required to give evidence or must be identified.

The Act also specifies that any child who has been committed to the care and custody of the Director of Child Welfare or of an agency shall receive an education in accordance with the laws of the Province and in keeping with his intellectual capacity, and that the Director or agency shall provide for his occupational training, and for his physical, mental and spiritual development as a good parent would for his own child.

In any case arising under the Act, the judge may make an order regarding the right of access to any child by any person or by either parent of the child.

Penalties for interfering with the care of wards or for ill-treating children have been made more severe than under the previous Act. Interference may now result, on summary conviction, in a fine or imprisonment not exceeding one year or to both fine and imprisonment, whereas formerly imprisonment was involved only if there were default in payment of the fine. The penalty for ill-treating children has been raised from a fine of \$100 to a fine of not more than \$1,000, with imprisonment of one year as an alternative or as an accompaniment of a fine, as under the previous Act.

The Lieutenant-Governor-in-Council is empowered to make Regulations prescribing the duties of the Director, prescribing provisions to be included in the by-laws of child welfare agencies; the records to be kept by them; the standards and methods of work to be maintained and adopted by child welfare agencies; the qualifications of personnel of the Division of Child Welfare and child welfare agencies; and any other matter necessary to carry out the intent and purpose of the Act.

The new Act does not contain a provision, as did the former Act, for the surrender of the control and custody of a child to the Director of Child Welfare or a child welfare agency by the parent by instrument in writing.

#### NOVA SCOTIA<sup>1/</sup>

A number of amendments to the Child Welfare Act of Nova Scotia were assented to March 24, 1961. The Adoption Act and the Children of Unmarried Parents Act were also amended.

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<sup>1/</sup> The Juvenile Delinquents Act (Revised Statutes of Canada, 1952, c.160) was proclaimed in force throughout Nova Scotia, October 1, 1961; heretofore the Act was proclaimed only in parts of the Province. Since authority for the establishments of juvenile courts is contained in existing legislation, no further provincial legislation was necessary, but as required by the Juvenile Delinquents Act, a proclamation was issued and published in the Canada Gazette, Part II, October 11, 1961.

Among the more important changes to the Child Welfare Act were the following: the Director of Child Welfare is given powers of the Inspector of Penal Institutions in respect of reformatory institutions for children; the appointment of an agent of a children's aid society must now be approved by the Minister of Public Welfare rather than by the Governor in Council as previously; a revision of Section 14 makes it clear that bequests are not to be included in the income of a society for the purpose of calculating the annual provincial subsidy; and major changes were made in the provisions for retarded children.

### Retarded Children

A new Part VII, "Mentally Retarded Children" replaces the former Part VII entitled, "Mentally Defective Children" of the Child Welfare Act. Throughout Part VII the term "retarded" replaces the term "defective" and the terms "severely retarded", "moderately retarded" and "mildly retarded" replace the terms "idiot", "imbecile" and "moron". The Director of Child Welfare may now accept the care of a retarded child with the consent of the parent and without a hearing before a judge as formerly required. The Director also determines the settlement of the child in the first instance, rather than the Court as formerly, and a court hearing is now required only if the municipality, which has been notified of liability for maintenance, denies that the child has settlement in the municipality. The provision requiring the parents of the child to contribute toward the maintenance of the child while in an institution have been deleted. It is specified that no child may be detained in an institution or remain in the care of the Director after he becomes twenty-one years of age. The former Part VII did not specifically mention the age beyond which care would not continue.

### Adoption

An Act to amend the Adoption Act, assented to March 13, 1961, added a subsection to section 17 making it clear that the provisions for confidentiality of documents applies to every order of adoption and to the petition, the material filed and the record of proceedings relating to the adoption; these provisions apply also to all adoptions completed before this amendment was passed.

### Unmarried Parents

An amendment to The Children of Unmarried Parents Act assented to March 13, 1961, provides that, in proceedings under this Act, a statement given to a social worker employed by the Department of Public Welfare or by a children's aid society while the social worker was carrying out his duties may not be admissible in evidence against the man who made it.



## NEW BRUNSWICK

At the spring session of the New Brunswick Legislature changes were made in The Children's Protection Act and in The Children of Unmarried Parents Act and were assented to April 8 and March 25, 1961, respectively.

### Protection

An addition to The Children's Protection Act (section 6) empowers a children's aid society to delegate its powers and duties to the council of one or more municipalities within the area in which the society has jurisdiction. Any agreement of this nature is subject to approval by the Lieutenant-Governor in Council.

### Unmarried Parents

Changes in The Children of Unmarried Parents Act affected a number of sections.

The medical certificate which must be filed with the magistrate before whom an information has been laid before the birth of a child is to be accepted "as prima facie evidence of the facts stated therein without proof of qualification or signature".

A new subsection (5) of section 2 has been added to permit the informant to withdraw the information either before or at the court hearing upon payment of court costs.

A further added subsection (6) of section 5 provides that no objection shall be allowed to any information on the ground that the information states that the woman is pregnant with child, if between the time the information is laid and the time the case is heard, she has given birth to the child.

The requirement has been eliminated that the evidence of witnesses, including the woman concerned and the person charged, be put in writing and signed by all of them when there has been a denial of the charges.

When the magistrate has not made an order and has not dismissed the charge, it is no longer required that a statement of the place of the mother's residence be included with the documents which the magistrate is required to forward to the clerk of the peace or to the clerk of the county court, as the case may be.

While it was formerly provided that the judge fix a time and place for the hearing as early as possible in view of all the circumstances, the

amendment makes this conditional upon the judge being satisfied as to the sufficiency of the information, depositions, and recognizance, if any.

The amendment allows a settlement by the father to be made in instalments rather than in one lump sum payment.

Subsection (2) of section 30 has been repealed and a new subsection substituted, which outlines in more detail than the former subsection the alternatives open to the judge when more than one person may be the progenitor of the child. There is, however, no essential change from the previous subsection.

## ONTARIO

### Vital Statistics

In Ontario certain changes in the Vital Statistics Act affect the birth registration of children born out of wedlock. Changes made in subsections 4 and 5 of section 6 of the Act by the Vital Statistics Amendment Act, 1960-61, came into force on July 1, 1961, which were designed to improve the accuracy of birth records and at the same time to serve the interests of the children concerned.

Formerly, it was not necessary to give any indication of the paternity of the child in registering the birth of the child of a married woman, although particulars of the husband might be given. Under the amendment, except in certain circumstances, the registration is to show the husbands' surname as the surname of the child and particulars of the husband are to be given as those of the father of the child.

In circumstances where the mother does not wish her husband to be shown as the father of her child, she may apply by way of originating notice to the county or district court of the county or district where the child was born for an order indicating that no particulars of her husband shall appear on the registration. The court may give such an order if satisfied that when the child was conceived, the mother was living separate and apart from her husband, and her husband is not the father of the child, and that she is commonly known under the surname of the father of the child. If the mother and the person who acknowledges himself the father of the child both make the request in writing, the court may direct that particulars of the person acknowledging himself the father be given as the father of the child, and if requested, that his surname be shown as the surname of the child.

A certified copy of the order is filed by the mother with the division registrar. If the birth has already been registered, an amendment will be made accordingly.

As formerly, the child of an unmarried mother is registered in her surname and no particulars of the father are given. As before, also, the revised section provides that the child may be registered in the surname of the person acknowledging himself the father if he and the mother both so request. The new section requires that the request be made by statutory declaration in the prescribed form. This is filed with the Division Registrar, or if made after the registration of the birth, with the Registrar General who will amend the registration accordingly.

### Juvenile and Family Courts

The Juvenile and Family Courts Amendment Act, 1960-61, repealed subsection 3 of section 4 of the Juvenile and Family Courts Act (R.S.O. 1960 c.201), which authorized the appointment of two judges for the Juvenile and Family Court of the Municipality of Metropolitan Toronto; extended the jurisdiction of judges or deputy judges; and transferred, without the jurisdictional limitation, the Section from The Magistrates Act, under which every judge and deputy judge of a juvenile and family court is ex officio a magistrate in and for the Province of Ontario. Jurisdiction of judges has been extended by the provision that every judge or deputy judge of a juvenile and family court, whether sitting in his own court or in another, may hear and determine any matter, whether it arose and was pending in the court in which he is sitting or in another.

### Day Nurseries

Regulations under The Day Nurseries Act were amended by O.Reg.4/61 gazetted January 14, 1961. This Regulation, effective January 1, 1961, changes the renewable date of licences from June 1st of each year to January 1st. The fee for a licence is set at \$10, and for the renewal of a licence at \$5.

### MANITOBA

In Manitoba, a number of major changes in child welfare were introduced in the Child Welfare Amendment Act, 1961. These become effective when the Act was assented to on April 15, 1961, with the exception of the revised Part VIII which became effective September 1, 1961. The amendment eliminated all reference to residence, since this is no longer of importance under the Act,<sup>1/</sup> revised adoption law (Part VIII) and made some changes in other sections such as those affecting guardianship and religious considerations in placing children.

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<sup>1/</sup> Child welfare maintenance costs were assumed by the Province upon proclamation of the major part of the Social Allowances Act, February 1, 1960.



## Adoption

Part VIII (Adoption of Children) includes a number of major changes, some in the form of new additions and others as an extension of former provisions.

A number of sections have been added to provide for closer government control of the private placement of children for adoption, including the requirement that an interim order of approval of the adoption be obtained. Such an order is not required for placement made by the Director of Child Welfare or a children's aid society.

Persons receiving children into their homes for adoption, other than through the Director or an agency, must notify the Director of Child Welfare within 30 days on the prescribed forms giving full particulars of the child and the name and address of the person from whom the child was received. Penalties are provided for violating this section. For a first offence a fine of not less than \$200, and for subsequent offences a fine of not less than \$500 is imposed.

Persons receiving children privately for the purpose of adoption are required to apply to a judge of a County Court for an interim order of approval of the adoption on the expiration of a three months' period and before nine months have elapsed from the date of notification to the Director. If the person concerned does not apply, the Director may make application to a judge of the County Court District in which the person resides. Notice of the hearing must be given to the person whose consent to the adoption is required, to the Director, if application is made by the person wishing to adopt the child, and to the person adopting the child, if application is made by the Director and any additional person whom the judge may direct. An interim order expires two years from the date of issuance.

A judge of a County Court cannot give an interim order of approval unless he has received from the Director a report of the investigation of the applicant. Persons to whom an interim order has been issued shall apply to the judge of a County Court for a decree of absolute adoption after the expiration of one year, but before the interim order has expired. Where an interim order has expired the Director may apply to a judge of a County Court in which the child resides to have the care and custody of the child turned over to the parents, to the Director, or to an agency.

A new section forbids the giving, taking, requesting or soliciting the consent to adoption of a child before the child is ten days old. Any consent given before the child is ten days of age is void, and any person who violates this provision is guilty of an offence, and liable on summary conviction, to a fine of not more than \$100.

A consent to adoption executed outside the province will be accepted as if executed on the prescribed form within the province,

provided it is in a form similar to that required in Manitoba, was given after the child had reached the age of ten days, and that similar results and consequences follow an adoption in the place where the person giving the consent resides as would be the case in Manitoba.

A new subsection permits a judge to dispense with the consent of the parent or guardian, if the person concerned cannot be found and all reasonable attempts have been made to find him, or, in the judge's opinion, it is in the best interests of the child to do so.

In de facto adoptions, the period of time after which a child may be adopted by persons who have been maintaining him as their own child has been reduced from seven to five years.

A new section provides that where a judge refuses to grant an interim order of approval of an adoption or refuses to grant a decree of absolute adoption he must return the child to the care and custody of the parents or guardian of the child, or, he must place the child in the care and custody of the Director or an agency, either until the child can be turned over to the parents or guardian, or permanently.

A new subsection makes it clear that adopting parents stand in loco parentis of the child and that they are responsible for the care, maintenance, support and education of the child as if the decree of absolute adoption had been made. Responsibility ceases if the child is withdrawn from the home because the judge has refused to decree of absolute adoption or an interim order of approval of adoption.

The Act now states that a decree of absolute adoption of a person may be made after he has reached the age of twenty-one years.

It is further provided that a step-parent, whose spouse is the parent of the child and has sole custody of the child, or is the sole guardian of the child may apply to a judge for a decree of absolute adoption after giving at least three months notice to the Director.

The section dealing with the effects of a decree of absolute adoption has been extended. It is now specified that for all purposes, the child is the child of the adoptive parent and the adoptive parent is the parent of the child, as if the child had been born to the adoptive parent in lawful wedlock. The adoptive child and his descendants stand in relation to the adoptive parent and his descendants, ascendants, and kindred in every way, including rights and interests in property, as if he had been born to the adoptive parents in lawful wedlock; and the adoptive parent and his descendants, ascendants, and kindred stand in relation to the child and his descendants in every way as if the child had been born to the adoptive parents in lawful wedlock. However, as previously provided, an adopted child does not by reason of the adoption lose the right to inherit from his natural parents or kindred.

A new section sets out the procedure for application to a County Court judge for an order directing service of notice or document by mail, when it cannot be served on the person concerned. Other added sections provide that, unless the judge orders otherwise, all proceedings relating to the adoption of a child are to be heard in camera, and that the judge shall not make an order or decree unless he is satisfied that having regard to all the circumstances, it is in the best interests of the child.

It is forbidden for any person to give or receive or agree to give or receive any payment or reward, directly or indirectly in consideration of the adoption of a child, or in procuring a child for adoption. Any person who violates this section, is liable, upon summary conviction, to a fine of not more than \$2000 or imprisonment of not more than two years, or to both fine and imprisonment. This section does not apply to the regular fee payable to the Director of Public Welfare.

#### Guardianship

An amendment to section 119 of the Act adds the words, "of the estate", to provide that the Surrogate Court is the guardian of the estate of an infant and not of the infant, where the infant has an interest in an estate or in personal property not exceeding \$2000.

#### General

Under Part X (General Provisions), an amendment to section 130 makes it clear that a peace officer, teacher, and other specified persons can seize liquor, cigarettes or other matter itemized, from a child under 16 years in a school building or grounds.

A further amendment to Part X (section 131) modifies the religious restrictions in the placement of children by permitting the preference of the mother, if she is living at the time of the committal of the child as a ward of the government, to be the determining factor in ascertaining the religion of an illegitimate child; or, if the child is being placed for adoption upon the consent of the mother, she may express her preference at the time of giving her consent to the adoption of the child.

The amendment further provides that the restriction that children must not be placed in homes of other than their own religion does not apply to the placing of a child in a home for adoption by the Director of Child Welfare or a children's aid society, if the parent has given a written statement that he has no preference as to the religion in which he wishes the child raised. The statement may be given at the time of signing consent to the adoption of the child, or at the time of committal of the child as a ward of the government. This permits the child to be



placed in the home which in the opinion of the Director or the agency, is most suitable regardless of religion.

An addition to section 141 allows the Lieutenant-Governor in Council to make regulations providing for the registration of an issuance of permits to foster homes and institutions and prescribing rules of conduct and management for foster homes and institutions.

### Regulations

Manitoba Regulation 51/61 gazetted July 29, 1961, prescribed forms and fees for the new Part VIII of the Child Welfare Act. The prescribed fee to be paid to the Director of Public Welfare in respect of an application for an interim order approval of adoption of a child is \$10, and for an application for a decree of absolute adoption is, as before, \$25.

Manitoba Regulation 62/60 gazetted December 17, 1960, to be effective January 1, 1961, sets out the per diem rates payable by the Director of Public Welfare on behalf of each child in the charge of, or committed to the care and custody of a children's aid society, (These rates are set periodically by the Public Welfare Advisory Committee which considers all expenses and revenues of children's aid societies and the cost of maintaining wards). The per diem rates for the Children's Aid Society of Winnipeg and of the Jewish Child and Family Service remain at \$2.30. The per diem rate for the Children's Aid Society of Eastern Manitoba is raised from \$1.78 to \$1.87, the rate for the Children's Aid Society of Central Manitoba from \$1.50 to \$1.65, and for the Children's Aid Society of Western Manitoba from \$1.50 to \$1.72.

## SASKATCHEWAN

### Legitimacy

The Legitimacy Act, assented to March 3, 1961, repealed The Legitimation Act, R.S.S. 153, chapter 397. The former Act provided that a child born out of wedlock be considered legitimate from birth if the parents subsequently intermarry. The new Act, which is like the Acts of Alberta and British Columbia passed in 1960, broadens the conditions for legitimation. It is now provided that the child of a voidable marriage which has been annulled is legitimate if he would have been the legitimate child of the parties concerned had the marriage been dissolved instead of annulled.

Provision is also made to consider legitimate the children of marriages where the spouse of one party is alive but an order of presumption of his or her death has been made, or, if a member of the Canadian Forces, official notification of death or of presumption of death has been given. In other void marriages the child is considered legitimate if the marriage of the parents was registered as required by the law of the place where it was entered into, and if either of the parties believed that it was valid.

### Protection

A number of amendments were made to The Child Welfare Act, to become effective June 1, 1961.

Section 30, specifying the duration of guardianship, has been replaced by a new section, which does not, however, alter the age (until twenty-one years) of a child committed to the permanent care of the Minister of Social Welfare and Rehabilitation. As previously, the section provides that all powers and rights of the parents are vested in the Minister. It is now specified that the Minister is responsible for the expense of sheltering, supporting and educating the child. The previous subsection, which indicated that no person was relieved of the liability to contribute to the maintenance of a child committed to the care of the Minister, has been omitted from the new section.

New sections authorize the Director of Child Welfare under agreement with the owners to subsidize certain homes or institutions caring for children who have been committed to the care of the Minister. The agreement provides that the Director may withdraw the children at any time that he considers it in the interests of the children or any of them to do so.

The Director may also enter into an agreement with any person, or any society, association or other organization carrying on work for the protection of children, in or outside Saskatchewan, for the sheltering, support and education of a child committed to the Minister. These agreements also provide for the withdrawal of any child whenever the Director considers it is in the interests of the child to do so.

### Adoption

The requirement that persons who apply to the Director of Child Welfare for leave to adopt a child must have resided in Saskatchewan for one year preceding the date of application has been modified; the requirement now is that each applicant be living in Saskatchewan.

An amendment to section 79 concerning appeal by any person, "aggrieved by an order of adoption or by the refusal of an order of adoption" provides that the procedure shall be as provided by the Rules of the Court of Appeal applying to an order made in chambers in a civil action, except that notice of appeal must be served within 30 days from the date of the order. The previous procedure was the same as for an appeal from a final order, judgment or decision of the district court in a civil action and no time limit for filing an appeal was specified.

#### Miscellaneous

A new section provides that no extension of time for appealing from an order of committal or an order of adoption, or commencing of any proceeding to quash any such order shall be allowed, if the application is made after the expiration of one year after the date of the order. An exception is made if the applicant alleges the order was obtained by fraud, and if the court is satisfied that the allowing of the appeal or the quashing of the order would be in the interest of the child concerned.

#### ALBERTA

A number of significant changes were made by the Act to amend the Child Welfare Act, assented to March 30, 1961.

#### Administration

The Home Investigating Committee has been abolished and its functions of receiving and disposing of applications from prospective foster parents, keeping records of foster homes and of supervising foster homes have been assumed by the Child Welfare Commission, which is responsible for enforcing the provisions of the Act.

The Commission must approve the appointment made by a municipality of a child welfare worker.

#### Protection

The Act now contains a provision for bringing a child back to court during the period of adjournment, if neglect continues in those instances where the child has been found neglected and has been returned to the custody of the parent or guardian, and the case adjourned for a sine die.

The amendment requires that notice of motion be served upon the parent or guardian at least ten days before the day fixed for the hearing of the application of the Superintendent for permanent wardship.



An addition to section 14 of the Act (relating to permanent wardship) requires the judge making the order to ascertain the financial circumstances of the persons liable for the support of the child, and if they are able to do so, to order them to pay a monthly sum to the Superintendent for the maintenance of the child. The amount may be varied from time to time, if necessary.

Sections 22 and 23 have been replaced by new sections. The Superintendent now becomes "the sole legal guardian of the person and estate of the child"; under the 1960 amendment the Superintendent became "the sole guardian of the person of the child". The amendment does not, however, affect in any way the rights, duties or responsibilities of the Public Trustee with respect to any property held by him for or on behalf of an infant committed to the permanent care and custody of the Superintendent. Section 23 extends wardship from the age of eighteen years to the age of twenty-one years. It also specifies other circumstances under which guardianship terminates, that is when the child is adopted, or on order of the court, or, at the time specified by the instrument surrendering the care and custody of the child by the parent to the Superintendent.

Those sections of the Act (43 to 47 inclusive) dealing with the establishment of child welfare associations or children's aid societies have been repealed.

#### Children's Institutions and Nurseries

The sections of the Child Welfare Act governing children's institutions and nurseries have been revised. Reference to kindergartens has been removed from the Act since they are now under the administration of the Department of Education.

A new subsection under section 49 permits the Minister responsible for administering the Act to exempt any institution or nursery from complying with sections 49 and 50, that is, the sections respecting licensing and operation of institutions and nurseries.

Section 49 has been amended so that no person may operate an institution or nursery unless he is the holder of a subsisting licence, rather than as previously, "having first obtained a licence to do so from the Commission".

Subsections 7, 8 and 9 of section 50 have been revised and re-enacted, and now outline specifically the information required from each institution or nursery by March first of each year and also set out the conditions under which a licence may be cancelled. The annual data required by the Commission must include the names of all children in the institution or nursery on December 31 as well as during the calendar year. A financial statement for the calendar year is also required, and any other information

concerning the affairs and management of the institution or nursery as may be required by the Commission.

The Commission may cancel the licence of any institution or nursery upon thirty days' notice to the licence holder if it appears that the institution or nursery is not giving adequate care to the children in its charge, or if the premises have become unfit or unsuitable for the purpose described in the licence, or if the number of children served is in excess of the number specified in the licence. An appeal against the cancellation of a licence may be made to the Minister, who may confirm the cancellation, or order the licence reinstated either unconditionally, or subject to such conditions as he may prescribe. Formerly, an institution or nursery could be closed only after the operator has been twice convicted of an offence under the Act.

#### Temporary Care

The amendment authorizes temporary foster home care for a child whose parent or guardian because of illness or other misfortune is unable to make adequate provision for the child. The Superintendent of Child Welfare will accept the child for care for a period of not more than three months and will assume that part of maintenance which the parent is unable to pay. The agreement may be renewed for a further three months if the Commission considers it in the best interests of the child, or the Superintendent may terminate the agreement and cause the child to be brought before a judge as a neglected child.

#### Adoption

The time limit between the receipt of a petition to adopt a child and the time that the Commission is required to forward it to the judge has been increased from sixty days to six months. (The Commission is required to investigate the application and submit a report with the petition to the judge.)

Section 74, on affidavits supporting a petition for adoption, no longer requires a statement listing the child's places of residence since birth, but a statement of present residence only.

#### Children of Unmarried Parents

The definition of 'mother' for purposes of Part III, (Children of Unmarried Parents) has been revised and made more specific. Where formerly section 93 included in the definition, a widow or a married woman separated from her husband who has been delivered of an illegitimate child or who is pregnant and likely to be delivered of an illegitimate child, the revised section specifies that the child must be born twelve months or more after the death of her husband or twelve months after she has ceased cohabiting with her husband, as the case may be.

The Commission, under the amendment, is given discretion in the making of inquiries through various child welfare and other organizations about every child born out of wedlock. Formerly, the Commission was required to make inquiries about every child born out of wedlock.

The father of the child is now required to contribute toward the maintenance and education of the child up to the age of sixteen years or until the age of eighteen years if the child is mentally or physically incapable of earning his own living. This is an amendment of the former provision which required the father to contribute to the child's support as long as the child was mentally or physically incapable of earning his own living.

Payment for the maintenance and education of the child now terminates on the death or adoption of the child, or on the marriage of the mother where she retains custody of the child, although in the latter case the Superintendent may apply to a judge for the continuation of the order.

A change has been made in section 110 on the disposition of moneys which are no longer payable for the purposes for which collected. Upon the termination of an affiliation order any moneys remaining, shall, in the discretion of the Commission, be repaid to the father or forfeited to the Crown.

A change in section 114 specifies that when the putative father admits paternity he may enter into an agreement for the maintenance of the child with the Superintendent or with the Superintendent and the mother. The Section as formerly written referred only to an agreement between the father and the Superintendent. Voluntary agreements may now be altered by mutual consent.

## BRITISH COLUMBIA

### Adoption

The Adoption Act Amendment Act of British Columbia was assented to March 27, 1961.

Several sections of the Act were replaced by new sections which contain some additions. Section 5, subsection (3) now permits the Court to prohibit the revelation publicly in the press or otherwise of the identity of the child or the petitioner, or both, or all of them. The section formerly made reference to the child only. The new provision is effective from March 28, 1957.



Section 8, subsection (2), respecting the affidavit verifying the consent to adoption, now adds the provision that the subsection does not apply to the consent of the Superintendent of Child Welfare or of a Children's Aid Society.

A further addition to section 8 has been made in the form of a new subsection (7) to provide that an adoption order made between March 28, 1957, and June 30, 1961, is not defective merely because the affidavit failed to state that the person consenting appeared to understand fully the effect of his consent and of the adoption, as required in subsection (2).

A new subsection (4) of section 9 states that in place of reciting any facts or proceedings from which authority to make the order is derived, it is sufficient in an adoption order to recite that the requirements of the Act have been complied with. This procedure is mandatory when so ordered by the Court. The previous subsection required that it be recited in the adoption order, if a child has no parent living and no guardian can be found who has the lawful custody of the child.

Section 11 respecting adoptions outside British Columbia has been re-enacted. The section which provides that foreign adoptions are to have the same effect as an adoption under this Act now applies to an adoption effected according to the law of "any other Province of Canada or any other country or part thereof". This replaces the words, "any other Province of Canada, or any other country or part thereof forming part of the British Commonwealth of Nations, or any part of the United States of America, or of any other country or part thereof approved by Order of the Lieutenant-Governor in Council".

#### THE NORTHWEST TERRITORIES

The Child Welfare Ordinance, assented to July 20, 1961, incorporated and revised the provisions of the previous Ordinances on the protection and adoption of children, which it repealed, and among several other changes, added a new part "Children Born Out of Wedlock".

The new Ordinance consists of five Parts: Part I, Superintendent of Child Welfare; Part II, Protection of Neglected Children; Part III, Children Born Out of Wedlock; Part IV, Adoption; and Part V, General Provisions.

#### Protection

A number of changes have been made in the law respecting neglected children, including a broadening of the definition of 'neglect' and an extension of the jurisdiction of the Superintendent of Child Welfare.

The reasons for which a child is deemed to be in need of protection now include medical and emotional neglect; that is, if the person in whose charge he is refuses or neglects to provide or secure medical, surgical or other remedial care or treatment necessary for his health or well-being, or if he deprives the child of affection to the extent that his emotional and mental development is endangered. If the Commissioner is satisfied that a child is in need of protection because he requires immediate medical, surgical, or other remedial care or treatment he may direct that the child be apprehended and be provided with the necessary care or treatment. Under these circumstances the hearing before a Justice may be postponed until the child is well enough to appear. Every person performing or assisting in a surgical operation or other care or treatment of the child is protected from civil responsibility, provided that he has acted in accordance with a direction made by the Commissioner of the Northwest Territories and that the operation or other care or treatment is administered with reasonable care and skill.

Any person authorized by the Ordinance, who apprehends a child without warrant, is required to bring the child before a Justice within a reasonable time having regard to the circumstances and opportunities of travel, but this must be within thirty days. The limit under the previous Ordinance was ten days. At least five clear days' notice of the hearing must be given all persons concerned, including the Superintendent; this is an extension of the previous requirement of three days.

Provision is now made for temporary commitment which may not exceed one year. During the period of commitment, the Superintendent or the children's aid society may bring the case again before the Justice for further consideration. Upon permanent commitment of a child, the Superintendent or children's aid society to whom the child is committed becomes the guardian of this person and property. Guardianship now terminates at the age of eighteen years instead of sixteen as formerly, and may be extended by the Justice, upon application by the Superintendent or a society, to the age of twenty-one years.

A number of other significant provisions have been made. The qualifications of an executive director of a children's aid society must be approved by the Superintendent of Child Welfare. The period for which a society may maintain a child in a place other than a foster home has been decreased from six to two months. Exceptions are made only with the written consent of the Superintendent. It is now required that the Commissioner of the Northwest Territories be notified if any child is placed by the Superintendent or a society in the care of a person of a religion different from that of the child. The fine for violation of any provision of the Ordinance has been raised from \$100 to \$500, and the term of imprisonment reduced from one year to six months.

### Children Born Out of Wedlock<sup>1/</sup>

Section III of the Ordinance, "Children Born Out of Wedlock", is similar to the legislation of most provinces governing children of unmarried parents. The term 'contribution order' is used rather than the term 'filiation order' and 'contributor' refers to the male person against whom such an order has been made. An unmarried woman includes a married woman separated from her husband for at least two months before the conception of the child.

The main provisions of this Part may be summarized as follows:

In estimating the amount of periodic payments or lump sum payments, the Justice is required to fix such payments as will enable the child "to maintain a reasonable standard of life having regard to what the child would have enjoyed had he been born in lawful wedlock". If the child is not in the care and custody of his mother, the Justice may require the mother also to contribute to the maintenance of the child.

An order may be made against more than one male person.

Moneys payable under an order, unless the Justice directs otherwise, are paid to the Superintendent, who disperses the funds for the benefit of the child. If the child is legally adopted or the mother marries and the child is in her custody, any balance of moneys held by the Superintendent may be held in trust for the child, or returned to the contributor, or forfeited to the Crown, or disposed of as the Commissioner may direct.

The father may enter into a voluntary agreement with the Superintendent, or with the Superintendent and the mother, to provide for payment to the Superintendent of an amount agreed upon. Such an agreement, or an order made by a Justice, binds the estate of the male person after his death in that moneys payable under the agreement or order are a debt due from his estate, and may be recoverable by court action. No action may be instituted without notice to the widow and to any adult legitimate children, and also to others interested in the estate. The Justice may vary the agreement or order so as to make equitable provision for the child and the dependents of the male person.

Testimony given by a man in proceedings under this Ordinance tending to show that he has had sexual intercourse with any woman is not receivable in evidence against him in any matrimonial cause.

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<sup>1/</sup> Section 7 of the Maintenance Ordinance was revised to take account of the provisions outlined in this Part respecting the maintenance of an illegitimate child.



The Registrar General of Vital Statistics and every district registrar of vital statistics is required, within thirty days of registering the birth of a child, to notify the Superintendent. The person in charge of a hospital or other institution giving care to a pregnant woman, who appears to be unmarried, is required to report her admittance to the Superintendent within three days.

Contribution proceedings are stayed forever by the marriage or by the resumption of cohabitation with her husband of any woman who is illegitimately pregnant. The right to commence such proceedings is also terminated.

### Adoption

Part IV, "Adoption", which replaces the Adoption Ordinance, adds a number of new provisions and alters others.

There is now no restriction as to age ~~or~~ marital status of a person who may be adopted; formerly the person to be adopted had to be unmarried and under eighteen years of age. The required minimum age of adopting parents has been reduced. It is now required that unless one applicant is the mother or father of the child, or another relative, as defined, the applicant, or one of the applicants, must be at least twenty-one years of age and be at least eighteen years older than the child. Also, the applicant or one of them must be resident in the Territories.

A number of changes respecting consents to adoption have been made. The Judge may dispense with any consent, including the consent of the Superintendent or a children's aid society, ordinarily required, if he is satisfied that such action is in the best interests of the child. The former Ordinance also permitted such action but no specific reference was made to the Superintendent or to a Society. The consent of the mother of a child will not suffice for an adoption order if it has been given before the child is fourteen days of age. A mother who has given a consent within sixty days of the birth of the child may withdraw the consent within sixty days of giving it. Otherwise, consent may be withdrawn only if an adoption order has not been made and the Judge is satisfied that it is in the best interests of the child that consent be withdrawn.

Every consent given by the mother within sixty days of the birth of the child must be accompanied by "an affidavit of execution". The person making the affidavit must swear that he is not an officer, servant or agent of any society or other agency that is concerned with the placement of the child for adoption and that no such person was present when

the mother signed the consent; that the nature of the documents was explained to her and that she appeared to understand that if an adoption order is made she will cease to be the mother of the child, and that there was no reason to suspect that her consent was not freely given.

When the Judge decides to postpone the determination of an adoption order, he may now issue an interim order, with the written consent of the Superintendent. The interim order gives the care and custody of the child to the applicant for a probationary period of not more than one year. The Judge may, as he considers proper, prescribe the terms of maintenance, education and supervision for this period. When the interim order terminates, the Judge may make an adoption order regardless of the prohibitions set out in the Act.

A change has been made in the section respecting the status of an adopted child. An adopted child now becomes for "all purposes" the child of the adopting parents, as if born to them on the date of the adoption order. Formerly, the child was, "for purposes of the custody of the person and rights of obedience to all intents and purposes the child of the adopting parent". The child ceases to be the child of the person who was his parent before the adoption, except for the laws relating to incest and the prohibited degrees of marriage which, but for the adoption, would have existed. Under the revised section an adoption made according to the laws of any province of Canada, any country or part thereof of the British Commonwealth of Nations, any state of the United States of America or any other country or part thereof approved by the Commissioner, has the same effect as if made in the Northwest Territories. The comparable provision of the previous Ordinance applied only to other provinces in Canada and referred only to rights of succession to property.

It is prohibited to give or receive or agree to give or receive any payment or reward either directly or indirectly in consideration of the adoption of a child or in procuring a child for adoption. Any person convicted of so doing is liable to a fine of not more than \$500 or to imprisonment of not more than six months, or to both fine and imprisonment.

## CHANGES IN CHILD WELFARE LEGISLATION IN CANADA, 1960

During 1960 amendments to child welfare legislation occurred in all provinces. The subjects affected were foster care, adoption, protection, custody and maintenance, juvenile offenders, questions of legitimacy, and day nurseries. Major changes were made in Quebec legislation.

### ADOPTION

#### Quebec

In Quebec, the amendment to the Adoption Act provides a penalty for violating the provisions of the Act regarding confidentiality of records. Access to adoption records kept by the courts is now permitted only by the judge and then only when it has been established to his satisfaction that an examination of the record is in the best interests of the child. Access is granted only under special circumstances such as succession, the death of the adopting parents or for other reasons which the judge considers sufficiently important.

The amendment also provides that persons of full age may be adopted by persons who maintained and educated them as their own children before their majority. The provision that the adopter must be at least twenty years older than the child has been modified so that this does not apply when the child is the natural child of either husband or wife.

Adoption of a child of a sex different from that of the adopter is now permitted when the adopter is a widowed grandmother or grandfather.

The amendment also affects the registration procedure when the adopting parent is domiciled outside the Province and has no previous residence in the Province. The required entries concerning the adoption are to be made in the duplicate register of the religious society, municipality or justice of the peace in the place where the institution which last had charge of the child is situated, or, alternatively, in the place of the child's domicile.

#### Alberta

An amendment to Part II of the Alberta Child Welfare Act requires that, in the application of an adoption order, the religion of the child be stated; previously the religious denomination was required.

#### Saskatchewan

In Saskatchewan the provision of the Child Welfare Act that an adopted person does not lose his right to inherit from his natural parents or kindred was repealed.



Newfoundland

In Newfoundland a section of the amendment to the Welfare of Children Act repealed the provision that the person giving consent to the adoption of a child must at the same time name the Director of Child Welfare as the legal guardian of the child until the adoption is legally completed.

PROTECTIONQuebec

Extensive changes were made by an amendment to the Youth Protection Schools Act in Quebec, which also changed the title of the Act to the Youth Protection Act.

The revision of section 15 dealing with children exposed to moral or physical dangers now permits a judge to bring a child before him upon information which he deems serious; this is in addition to other persons previously specified in the Act who may cause a child to be brought before a judge.

While retaining the generality of the former section 15, this section also specifies some of the classes of children regarded as exposed to moral or physical dangers. These include children whose parents, tutors or guardians are 'deemed unworthy', orphans who have no person to care for them, abandoned illegitimate children, those particularly exposed to delinquency by their environment, unmanageable children showing pre-delinquent traits, as well as those exhibiting serious character disturbances. The judge is given the authority to place a child for his own protection in the care of any person, society or institution temporarily, while the case is pending.

A new clause permits the director of a school or institution, from which a child escapes or neglects or refuses to return after a leave of absence, to make a report to the judge, who may have the child brought before him and may impose upon him such conditions as are in the child's interests.

Also, a further clause provides for a penalty if any person willfully exposes a child to moral or physical danger or neglects to protect him from such danger. If the circumstances are not covered by the Criminal Code, such a person is liable on summary conviction to a fine not exceeding \$300 or to imprisonment not exceeding one year or to both fine and imprisonment.

Newfoundland

Newfoundland amended the Welfare of Children Act to add two further categories to the definition of neglected children: children whose parents are dead and who have no near relatives, and children who are illegitimate and whose mothers are dead.

## Alberta

In Alberta, a new section of the Child Welfare Act outlines the procedure to be followed by the Superintendent of Child Welfare in applying to a judge of a district court for permanent care and custody of a child. It is made clear in the amendment that a judge of the Juvenile Court may make an order returning a child to his parents or committing him temporarily to the care and custody of the Superintendent of Child Welfare. Also, the Superintendent becomes the "sole guardian of the person of the child" upon the child being committed to his permanent care and custody. This is a revision of the former "legal guardian of the person of the child".

Under the Child Welfare Act, guardianship terminates when the child becomes eighteen years of age unless the judge's order committing the child specifies otherwise; the amendment adds that guardianship assumed by surrender of custody instrument terminates, if the surrender of custody instrument specifies an earlier date.

## Saskatchewan

The Saskatchewan amendments to the Child Welfare Act broaden the definition of "apprehension" to include, in addition to its ordinary meaning, also the act of notifying the parent or person having actual custody of the child that the child will be examined before a judge within three weeks or such further time as the judge may allow. The amendment also provides that the judge, on committing a child to the care and custody of the Minister of Social Welfare and Rehabilitation, shall include in the committal order a statement on the religion of the child. If this cannot be determined, a statement to this effect must be included in the order.

## New Brunswick

New Brunswick amended The Children's Protection Act to extend from ten to fifteen days the time between the apprehension of a child and the time in which he must be brought before the judge. The judge may, if he considers it in the interests of all concerned, direct that a child who is under ten years of age not appear before him, although for purposes of the Act, the child is considered as having been brought before him.

## Prince Edward Island

In Prince Edward Island an administrative amendment was made to the Children's Protection Act: Section 21 provides that a children's aid society or child welfare agency upon ceasing to exist must deliver all trust funds on hand to the provincial treasurer who will divide this equally between St. Vincent's orphanage and the Mount Herbert Orphanage. The amendment adds "and/or any approved private welfare agency".

## MAINTENANCE AND CUSTODY

### Quebec

Changes in the Youth Protection Act and in the Quebec Public Charities Act, both effective from January 1, 1960, affect the financing of the maintenance of children in the care of various types of agencies and institutions.

Under the amendment to the Youth Protection Act the costs of maintaining a child in a youth protection school, or a child under the supervision of the school, but absent for educational reasons, occupational training, or while in a foster home, are now paid wholly by the provincial Government. If a child committed to care under the Youth Protection Act has been placed in a public charitable institution<sup>1/</sup>, costs are as provided under the Quebec Public Charities Act with the municipality assuming a part of the cost. Also, the judge may order the parent or other person liable for the maintenance of the child, who has been placed in a school or under the supervision of a school, or who has been transferred by the Minister of Social Welfare to any other institution devoted to the welfare of youth, to pay to the Department of Social Welfare the whole or part of the cost of custody of the child. When a municipality is involved, it may, however, sue for the recovery of any moneys expended on the maintenance of a child in a charitable institution from his estate or from persons liable for his maintenance, but cannot effect payment from the salary of the child after he has left the institution.

For purposes of determining the financially responsible municipality, the definition of domicile of the child has been changed under the amendment from "residence during six consecutive months before placement" to the "last place of residence of his father and mother, tutor or guardian, during twelve consecutive months".

The amendment to the Quebec Public Charities Act, with Regulations, introduces a number of major changes in the financing of child welfare costs other than those outlined above under the Youth Protection Act. The Province assumes a larger share of the costs, with a correspondingly lesser share being assumed by the municipality. The Province assumes the entire cost of some services, and in others, shares the cost with the institution with no contribution by the municipality, as noted below.

Costs of maintenance of children admitted to a public charitable institution are shared by the Province, the municipality of the parents' domicile, and the institution. The amendment reduces municipal contributions from 15 to 8 per cent for municipalities governed by the Municipal Code, and from 24 to 12 per cent for cities and towns. (The rates of provincial reimbursement to institutions are as set out by Order-in-Council 474 of March 30, 1960.) If the parents are able to pay in part for the maintenance of their children, they are expected to do so and the municipality is reimbursed according to its share of the amount so collected. Municipalities, however, are exempt from contribution to the costs of care provided by homes for unmarried mothers and by institutions specializing in the rehabilitation of physically handicapped or retarded or emotionally disturbed children; these costs are borne two-thirds by the Province and one-third by the institution.

<sup>1/</sup> Public charitable institutions include any organization or agency recognized as such by the Lieutenant-Governor in Council.



The Regulations under the Public Charities Act make important changes in the financing of the maintenance of children born out of wedlock. The cost of maintaining illegitimate children to be placed for adoption is borne entirely by the Province until they are placed for adoption. The Province will also contribute, partly or wholly, to the maintenance of a child of an unmarried mother on a temporary basis and under special circumstances, when the child is not to be placed for adoption but has been admitted to a foster home supervised by a social agency. The Province will grant assistance to a mother who can keep the child at home without exposing him to moral or physical dangers, if there is no other responsible person to look after him while she works.

The Regulations set out the procedure for admission of children to public charitable institutions. Admission is determined on the basis of the social plan for the child, and admission at the expense of Public Charities must have been recommended by an order under the Youth Protection Act or must be considered necessary by the Social Assistance Services of the Department of Social Welfare after a study of the report submitted by the local social service agency. The Social Assistance Services notifies all parties, including the municipality of the domicile of the parents, of the decision reached concerning the application for admission. The municipality can accept or reject the application, but if rejected, the matter can be referred to a district judge for decision as to indigency, and if necessary, of domicile.

#### Manitoba

In Manitoba the proclamation, effective February 1, 1960, of the major part of the Social Assistance Act affected the financing of child welfare costs. The Province now assumes the total cost of maintenance of children apprehended by and in the charge of the Director of Public Welfare or of a Children's Aid Society and the maintenance and costs of hospital care and treatment of children committed by the Court to the care and custody of the Director or of a Children's Aid Society.

An amendment to the Child Welfare Act passed in 1959 (Chapter 8, Statutes of Manitoba, 1959, Second Session) was proclaimed in force from February 1, 1960. This amendment which affects Part IV of the Act (Neglected Children) deletes references to municipal responsibility for child welfare maintenance costs and substitutes new sections dealing with procedures concerning maintenance to take account of the change made by the Social Assistance Act. The amendment also provides that a child, in respect of whom an order has been made under the Juvenile Delinquents Act, is considered for purposes of the Child Welfare Act to have been apprehended as a neglected child and committed as a neglected child.

#### Nova Scotia

Under the amendment to the Child Welfare Act of Nova Scotia the amount which a parent or other person is liable to contribute toward the maintenance of a ward in the care of the Director of Child Welfare or of Children's Aid Society has been raised from \$7 a week to \$14 a week.

## FOSTER CARE

### Quebec

The Regulations under the Quebec Public Charities Act require that a child admitted to a foster home be visited at least twice a year by the person responsible for the admission or by a person assigned by the responsible agency.

To prevent over-crowding in the local schools, the number of school and pre-school children to be admitted to foster homes in any given locality must be fixed jointly by the local school commission and the social agency. An agency may not place a child in the territory served by another agency without permission of the other agency.

## JUVENILE OFFENDERS

### Ontario

In Ontario an amendment to the Training Schools Act removed 'incurability' as grounds upon which a child may be sent to a training school, and substituted instead the words "prove unmanageable". The amendment also makes it clear that the judge may order the parent to contribute to the maintenance of a child in a training school whether or not the child is over the age of sixteen years. It is further provided that the training school authorities may recall to the school at any time any ward of the school who has been placed in a foster home.

### Nova Scotia

The Nova Scotia amendment to the Child Welfare Act made several changes affecting juvenile offenders. It raised the amount which the Province pays toward the maintenance of those in reformatory from \$500 a year to \$850. The amendment also permits the person in charge of a reformatory, with the approval of the Director of Child Welfare, to discharge a ward who has been committed as repeatedly unmanageable or to release him on probation as is customary in other cases. Formerly, application had to be made to the judge for the discharge or release on probation of wards in this category. The amendment also provides that probation officers be appointed under the Civil Service Act and not by the Governor-in-Council as was previously the case, and, further, repeals the former provision that a supervisor of delinquency services be appointed by the Governor-in-Council.

## LEGITIMACY

### Alberta

In Alberta the Legitimacy Act, proclaimed in force from November 1,

1960, repealed Part VII, "Legitimation" of the Domestic Relations Act. The new Act considerably broadens the conditions for legitimation, which was formerly permissible only if the parents subsequently intermarried. The new Act, which is similar to the new Act of British Columbia, also provides that a child of a voidable marriage which has been annulled is legitimate if he would have been the legitimate child of the parties concerned had the marriage been dissolved instead of being annulled.

Provision is also made to consider legitimate the children of marriages where the spouse of one party is alive but an order of presumption of his or her death had been made, or, if a member of the Canadian forces, official notification of death or of presumption of death had been given.

In the case of other void marriages, the child is considered legitimate if the marriage of the parents was registered as required by the law of the place where it was entered into, and if either of the parties believed that it was valid.

#### British Columbia

British Columbia repealed the Legitimation Act and the Equal Rights for Children Act and incorporated in large part the substance of both acts in the Legitimacy Act, which came into force and effect on April 1, 1960. It includes in addition a new clause declaring legitimate a child of a voidable marriage which has been annulled, if the child would have been the legitimate child of the marriage if it had been dissolved instead of annulled.

This section and two others, which comprise the major part of the Act, are as recommended by the Conference of Commissioners on Uniformity of Legislation in Canada. One of these sections, which was formerly set out in the Equal Rights of Children Act, has been retained in the new Act. It provides that the child of parents, one of whom was previously married, but in respect of whose spouse an order of presumption of death or an official notification of death has been made, be considered legitimate, even if the spouse were in fact alive at the time of the marriage. The other section, provides that the child of parents who enter into a marriage that is void be considered legitimate provided that the marriage was registered or recorded in substantial compliance of the law where it was entered into, and that either of the parties reasonably believed that it was valid.

#### DAY NURSERIES

#### Ontario

In Ontario an amendment to The Day Nurseries Act excludes from the definition of "day nursery" any nursery or kindergarten conducted as part of a school, college, academy or other educational institution that is giving instruction equivalent to that given in grades 1 to 8 in a public or separate school. Nursery schools or kindergartens conducted as part of the public or



separate school are already excluded from the Act. The amendment also authorizes the Lieutenant-Governor in Council to prescribe the fee payable by an applicant for a licence or renewal of a licence.

### Alberta

Under Part I of the Child Welfare Act of Alberta the definition of nursery has been revised to be more specific and inclusive. Formerly "nursery" was defined "as a house or other building or part of a building where four or more children under six years of age are kept for compensation". The new definition specifies "any pay school, day nursery, nursery school, boarding nursery or home other than a kindergarten established under the School Act"; no specific age of children is stated and compensation need not be involved, but the children must be left by their parents or guardians for supervision or care during the day or for longer periods.

CHANGES IN CHILD WELFARE LEGISLATION IN CANADA IN 1959

Seven provinces amended their child welfare legislation in 1959, but there were few major changes.

ADOPTION

Ontario

The Vital Statistics Amendment Act, 1958, (No. 2), in Ontario authorizes the Registrar-General, upon receipt of an adoption order together with an application for the registration of the birth, to set aside and seal the original birth registration and substitute a new registration in accordance with the facts contained in the adoption order. The new registration is entered as if the adopted person had, on the date and place recorded in the original registration, been born in lawful wedlock to the adopting parents. The date of registration is shown as the date of the original registration.

Nova Scotia

Nova Scotia amended the Adoption Act so that a person, other than the person to be adopted, may not revoke his consent to adoption unless it is shown to the satisfaction of the court that this is in the best interests of the child.

PROTECTION

Ontario

In Ontario the Children's Boarding Homes Amendment Act makes it an offence for a person to cause a child to be lodged, boarded or cared for in a children's boarding home that is not registered under the Act. It is an offence also for the parent, guardian or other responsible person to permit such care. The Act provides for a fine of not more than \$200 for persons found guilty on summary conviction for violating the terms of the Act. A child who is lodged, boarded or cared for in an unlicensed boarding home shall be considered an apparently neglected child, under Part II of the Child Welfare Act.

New Brunswick

An amendment to The Children's Protection Act of New Brunswick provides that a children's aid society must receive ten clear days' notice before an order committing a child to the society is made.

### Manitoba

An amendment was made to the Manitoba Child Welfare Act to give greater protection to children urgently in need of medical care by broadening the definition of neglect on medical grounds and extending the authority of the court. With the addition of the words "or treatment", a child is now described as neglected if his parents refuse or neglect to give him the necessary medical, surgical, or remedial care, or treatment. The court now has the authority to make the necessary order without notice to the persons normally entitled to receive notice if delay means that the child may die or suffer serious injury if he does not receive immediate medical attention. In determining this form of neglect the judge may require and hear evidence from at least three qualified medical practitioners who are appointed by the Minister of Health and Public Welfare to examine the child and to determine whether any particular operation or medical or remedial care or treatment is necessary for his health or well-being. For purposes of the Act, a hospital is considered a shelter or detention home, when the child who is apprehended as neglected is already in hospital, and medical advice indicates that he should remain there.

### Saskatchewan

An amendment to the Child Welfare Act in Saskatchewan transferred the program for juvenile delinquents from the Corrections Branch of the Department of Social Welfare and Rehabilitation to the Child Welfare Branch. If a child is adjudged to be a delinquent, he may on that account be declared neglected and made a ward of the Minister, who can dispose of the case in the best interests of the child, and may commit him to a correctional institution, to a boarding or foster home, or may make use of other resources.

### Newfoundland

In Newfoundland the Welfare of Children (Amendment) Act, 1959, provides that temporary committal to the care and custody of the Director of Child Welfare may not exceed twelve months.

### Prince Edward Island

An amendment to the Children's Protection Act in Prince Edward Island authorizes a court to place a neglected or delinquent child in the custody of one of its parents to the exclusion of the other, under the supervision of the Director of Child Welfare or of a child welfare agency. Formerly, reference was made only to 'parents'.

## MAINTENANCE

### Manitoba

Under Manitoba Regulations 13/59, gazetted January 24, 1959, to be effective from February 1, 1959, the Rate Establishment Committee raised the per diem rate chargeable to a municipality for each child



committed to the care and custody of The Children's Aid Society of Winnipeg and the Jewish Family and Child Service to \$2.30 from \$2. Other rates remain the same. An amendment to the Child Welfare Act, not yet proclaimed, will alter maintenance provisions to conform to the changes made by the Social Assistance Act. (On proclamation of this Act, the Province will assume the entire cost of child maintenance payments.)

### JUVENILE OFFENDERS

#### Ontario

In Ontario, the Juvenile and Family Courts Act, 1959, which repealed the former Act, is "designed to improve the administration of justice in the juvenile and family courts by providing for the employment of officers and staff and for the establishment of facilities commensurate with their needs".

The Act contains several new provisions including those for the establishment in any municipality having a population of at least 500,000 of a diagnostic clinic as part of the juvenile and family court. Professional staff are appointed by the Attorney-General and are considered officers of the court of which the clinic forms a part. In municipalities of this size, also, the Attorney-General may appoint an executive officer for the juvenile and family court.

A detention and observation home may be established, maintained and operated as part of the juvenile and family court, with the superintendent and assistant superintendent appointed by the Attorney-General. Also, provisions for the appointment, salaries and status of members of the staff of juvenile and family courts have been clarified under the new Act.

Regulations prescribing the functions of and providing for the management of detention and observation homes and diagnostic clinics, and prescribing the duties of officers and members of the staffs of juvenile and family courts may be made by the Lieutenant-Governor in Council.

Under the Training Schools Amendment Act of Ontario, the per diem rate chargeable to the municipality of residence for the maintenance of a boy or girl in a training school is set by the Lieutenant-Governor in Council instead of, as formerly, by the Act.

#### Newfoundland

Under the Corrections (Amendment) Act, 1959, Newfoundland provides that a juvenile committed to the care and custody of the Director of Child Welfare for a fixed period may not be detained in a training school after the expiration of the period. The Director

is to be the guardian of every child committed to a training school in the same way as a guardian appointed by statute, or by any court, or by any will or instrument, and he is charged with maintaining supervision over a child who has left the training school, until guardianship terminates. The membership of the Youth Guidance Authority is enlarged to include three persons other than the specified officials, instead of one other person as formerly.

## CHANGES IN CHILD WELFARE LEGISLATION IN CANADA, 1958

Amendments to child welfare legislation were passed in 1958 by the Provinces of Newfoundland, Nova Scotia, Ontario, Saskatchewan, Alberta and British Columbia. The principal matters covered were adoption, foster care, maintenance and custody, and provisions relating to unmarried parents and juvenile offenders.

### ADOPTION

#### Newfoundland

The amendment to Newfoundland's Welfare of Children Act is designed to strengthen provincial control of adoption at the point of placement. It provides for the imposition of a substantial fine or imprisonment or both upon any person who receives a child with a view to adoption except with the prior written consent of the Provincial Director of Child Welfare. Exception is made where the person is the mother of the child or of the same blood as the mother, where the child is born out of wedlock; or of the same blood as the mother or the father of the child where the child is born in wedlock. The same penalty of a fine of up to five hundred dollars or imprisonment for up to one year or both fine and imprisonment can be imposed under the Act against a parent who agrees to give up a child to a non-relative, with a view to the child's adoption, without the consent of the Director. Where a child has been placed for adoption contrary to these provisions a court may declare such a child to be neglected and make any of the provisions for him that may be made for a neglected child.

#### Ontario

The numerous changes in adoption in Ontario's child welfare legislation necessitated the replacement of the entire portion of the Child Welfare Act that deals with adoption. The probationary period of residence of a child in an adopting home is reduced from one year to six months. Also, to prevent prolongation of adoption proceedings, the Act requires that an application for an adoption be heard by the court within one year; where this is not done a new application must be made in its stead.

Limits are placed on the consent procedure as it affects a child born out of wedlock. Consent to the adoption of her child cannot be given by a mother until after the child is seven days old. The consent of the mother (or the father, if the child resides with and is maintained by him) can be withdrawn within twenty-one days after it was given, provided that such withdrawal is made in writing.



Provision exists in the new adoption legislation, as in the old, for the court to proceed with an adoption where a consent normally required has not been obtained. Under the previous legislation such action could be taken "having regard to all the circumstances of the case". In the amendment the criterion for the court is that it be specified that dispensing with the consent "is in the best interests of the child".

The sections dealing with the effect of an adoption on the status of a child were substantially amended to ensure that the child ceases in all legal respects to be a member of his former family and becomes for all purposes and in all relationships a member of his new family. An exception to the completeness of the change of relationship is that it does not remove the effect of the laws relating to incest and the prohibited degrees of marriage which, but for the adoption, would have existed.

Also far-reaching is the recognition which the amendment extends to adoptions completed in other jurisdictions. Adoptions not only of all Canadian provinces and territories, but of all other countries are now given the same recognition as those completed in Ontario.

#### Saskatchewan

A brief amendment to Saskatchewan's Child Welfare Act removes the requirement that adopting parents must have attained the age of twenty-five years.

#### Alberta

Alberta, in its 1958 amendment to the Child Welfare Act, also rewrote the sections relating to the legal status of adoption and, in terms very similar to those used in Ontario, clarified the provisions making the adopted child in all respects the legal child of the adopting parents. A further amendment had to do with actions to set aside an adoption order. The former provision ruled out such actions after one year from the granting of an order, except on the ground that the order was procured by fraud, and it could then be set aside only if such action was in the interest of the adopted child. A new subsection provides that where an adoption order is set aside all the relationships of the child are re-established as they were before the order of adoption was made.

Alberta's new legislation, like that of Ontario, deals with recognition of the adoptions of other jurisdictions. Up to 1958 the question was touched on only in relation to the rights of succession to property. The new section, extending to all aspects of adoption, grants the same recognition to adoptions completed elsewhere as to those completed in the Province.

A section of the Alberta Act sets out in some detail how the completed adoption orders are to be dealt with and their confidentiality safeguarded by the Deputy Registrar General of Vital Statistics. This section was amended by the addition of a subsection relating to the special register which contains the orders. Access to data contained in this register could, prior to the 1958 amendment, be disclosed only upon the order of a judge except for the issuance of birth certificates to the adopted child or the adopting parents. The amendment authorizes the Deputy Registrar-General to refer to the special register for the purpose of determining whether persons applying for a marriage permit are within the forbidden degrees of consanguinity when one of the parties to the proposed marriage is an adopted child. Such reference to the special registrar may be made at the request of an issuer of marriage licenses, a clergyman or a marriage commissioner. Alberta would appear to be the only province which has, within its Adoption Act, a provision of this nature.

#### FOSTER CARE

##### Newfoundland

An important legislative change affecting foster care was enacted by Newfoundland. The amendment replaces a section in the Welfare of Children Act dealing with the licensing of children's boarding homes with a more detailed statement, which has much in common with the amendment concerning adoption placement. All persons receiving children who are not related to them, on a boarding basis, are required to obtain a licence from the Director of Child Welfare. The Director is authorized to specify the number of children who may be received and attach any other conditions he believes are required. He may refuse to issue a licence or may revoke it without stating the reasons for the refusal or revocation. The licensing requirement does not apply where a child is received in a boarding home for a period of under one year during the temporary absence from the province or during the illness of one or both of the parents.

The same penalties noted with respect to adoption placement, that is, a fine of up to five hundred dollars or imprisonment for up to one year, or both fine and imprisonment may be imposed, for either receiving or placing a child in an unlicensed home. Where a person has been convicted under this section, the court may, if conditions warrant, declare the child involved to be neglected and take any of the various measures which this Act sets out for the protection of a neglected child.

MAINTENANCE AND CUSTODY

Newfoundland

Newfoundland revised the section of the Welfare of Children Act setting out the responsibility of parents to contribute financially when their children are in the care of the Director of Child Welfare. The amended section re-affirms the authority of the court to order the parent to pay such sums as have been required for the support of a child who has been committed to the Director's care as a neglected or delinquent child, and extends the provision as well to children who have come into the Director's care on a non-ward basis at the request of the parents.

Nova Scotia

Nova Scotia repealed the section of its Child Welfare Act which deals with the financial contribution by parents towards the maintenance in institutions of mentally defective children being cared for by the Director of Child Welfare. The amendment sets out in some detail the procedure by which a judge may, either at the time that a child is committed to the care of the Director or later, assess a parent for a sum not exceeding \$14 a week for every week the child is in the Director's care. The amendment gives the municipality in which a child has residence the right to apply for a court review of the capacity of parents to contribute to a child's financial maintenance. Previously the right to initiate such reviews was limited to the Director.

Under the 1958 amendment the existing requirement that only a judge could order the termination of the care of a mentally deficient child previously committed to the Director was removed. The authority for such termination now rests with the Minister of Public Welfare.

While the term "child" in the Act dealing with defective children is defined as a boy or girl under the age of eighteen years, the 1958 amendment provides that in certain sections, including those having to do with financial maintenance, the word "child" is extended to persons committed to the care of the Director who have not attained the age of twenty-one years.

Ontario

An amendment relating to the maintenance of children taken into the care of a children's aid society clarifies the extent of municipal responsibility for maintenance costs prior to the decision of a court on wardship. It requires that when a court order is made for the wardship of a child the municipality shall pay the designated daily rate of maintenance from the day the child came into the society's care. This requirement applies alike to the child detained in a place



of safety and to the child received into care on a voluntary basis with the written consent of a parent. In neither case, however, can the municipality be made liable for a period of more than ten days. Where a child detained by a society is not found to be neglected, the court may make an order for the municipality to pay the child's maintenance for the period of the detention but this too may not exceed a period of ten days.

#### Saskatchewan

Perhaps the most important of two or three brief amendments to Saskatchewan's Child Welfare Act has to do with the discharge of a child from wardship. The section previously provided that where a child who had been committed to the care and custody of the Minister of Social Welfare and Rehabilitation was returned permanently to the control of his parents or where the child married, he could be discharged from the Minister's care through a decision of the Lieutenant-Governor in Council taken on the recommendation of the Minister. This procedure continues in relation to the child who marries, but in the case of the child returned to his parents the decision concerning discharge must now be taken by a judge after a formal hearing of the question.

#### Alberta

Through an amendment to Alberta's Child Welfare Act together with a complementary amendment to the Public Welfare Act, the Province now assumes the full cost of the care and maintenance of children committed to the care and custody of the Superintendent of Child Welfare. Previously the municipality was responsible for the cost of maintaining wards, with the Province making a reimbursement payment of sixty per cent of these costs.

#### British Columbia

An amendment to The Protection of Children Act of British Columbia also increased the contribution of the Province to the municipality for the care and maintenance of children committed to a children's aid society. The increase was from eighty-to-eighty-five per cent.<sup>1/</sup> The new provision also applies to wards of the Provincial

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<sup>1/</sup> A subsequent change for which no legislation was required brought the increase to 90 per cent. Beginning September 1, 1958, costs of child welfare services were included in social assistance costs shared between the provincial Government and the municipalities on a 90 - 10 pooled basis, with the Province bearing 90 per cent of the costs, and the municipal share divided on a population basis.

Superintendent of Child Welfare who have municipal residence. The amendment however makes clear that where a child has residence in a local district municipality or village municipality the total maintenance is paid by the Province.

### UNMARRIED PARENTS

#### Newfoundland

One of three changes in Newfoundland's Welfare of Children Act having to do with children born out of wedlock is designed to clarify procedure in the case where a man, since deceased, had children born both in and out of wedlock. The change provides that where the affiliation order cannot be carried out without depriving the widow and the legitimate children of proper subsistence and education, the magistrate may not only vary the affiliation order, as was possible before the amendment, but may require that any sum payable under the affiliation order remaining unpaid be paid in such manner as the magistrate directs. He may also rule that the order be cancelled.

A second change in the Act makes it possible for a magistrate to cancel an affiliation order because of the marriage of the mother. An application for such cancellation may come from the Director of Child Welfare, a welfare officer, or the mother or father. The magistrate, however, is not bound to act upon the application.

The third change elaborates in some detail the proceedings to be taken to enforce the payment of sums set out in an affiliation order. The amendment provides that the Summary Jurisdiction Act shall apply to actions for default except in the matter of imprisonment. Where the putative father fails to satisfy the magistrate that his default is due to inability to pay, the magistrate may order him to be imprisoned for a period of up to six months unless the sums in default are paid sooner. The new section also provides for transmission of an affiliation order to a magistrate where the putative father is residing and for the magistrate to proceed in the same way as the magistrate who made the order.

#### Ontario

An Ontario amendment provides that where an affiliation order is being enforced through a judgment of the division court, garnishee proceedings may now be taken.

JUVENILE OFFENDERS

Newfoundland

A new section added to the Welfare of Children Act provides that where a juvenile offender under the age of seventeen years fails to observe conditions imposed upon him by the juvenile court he may be brought again before the judge of the juvenile court at any time. The judge may then take any of the courses of action open to him at the initial hearing. This includes having the child, if he is over fifteen years of age, committed to trial before a magistrate, if the juvenile court judge deems such action to be in the interest of the child and of the public.

Nova Scotia

Legislation relating to juvenile corrections, though outside the Child Welfare Act, was an amendment to the Nova Scotia School for Boys Act. The amendment provides for the appointment of an Advisory Board for the School to assist and advise the Governor in Council and the Minister of Public Welfare in the administration and conduct of the School. The members of the Board are appointed and its chairman is designated by the Governor in Council. Allowances covering the members' necessary expenses are provided from provincial funds.







